

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

MELISA ARBINO,

Plaintiff,

Case No. 3:06 CV 40010

-vs-

MEMORANDUM OPINION
AND ORDER

JOHNSON & JOHNSON, et al.,

Defendant.

KATZ, J.

This matter comes before the Court on Plaintiff's motion to certify for an interlocutory appeal under 28 U.S.C. § 1292(b). (Doc. No. 21).

As correctly noted by Plaintiff, this section allows a district court to certify a matter for interlocutory appeal and order "that involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal of the order may materially advance the ultimate termination of the litigation." Upon being persuaded that the statutory criteria has been satisfied, the district court must then state its reasons for advancing an interlocutory appeal.

However, the decision to certify an interlocutory appeal lies within the discretion of the trial court. *See In re Air Crash Disaster Near New Orleans, La.*, 821 F.2d 1147, 1167 (5th Cir. 1987), *vacated, remanded, on other grounds*, 490 U.S. 1032 (1980); *United States v. Moats*, 961 F.2d 1198, 1201 (5th Cir. 1992) (no review allowed as trial court refused certification). A district court's denial of a motion to certify an interlocutory order is not appealable until review on an appeal of the final judgment. *See* 20 MOORE'S FEDERAL PRACTICE § 305.14[3] (3d ed. 2006).

This Court believes it has the discretion to certify issues to the Supreme Court since the legislation was adopted subsequent to that Court's decision in 1999. *See State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 715 N.E.2d 1062 (1999). That discretion has not, in the opinion of this Court, been abused. Therefore, the motion seeking an order permitting an interlocutory appeal (Doc. No. 21) is denied.

IT IS SO ORDERED.

S/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE